

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Judgment Creditor,

v.

ERIC IAN WHITEHEAD,

Judgment Debtor,

and

CHARLES SCHWAB & CO., and
ASSETMARK TRUST COMPANY,

Third-Party Respondents.

20 CR 692 (RA)

TURNOVER ORDER

WHEREAS the Court entered judgment against ERIC IAN WHITEHEAD on October 28, 2021, and ordered him to pay more than \$3.9 million plus interest in restitution to the victim of his crime;

WHEREAS Whitehead has made payments totaling \$1,315,242.97, and his outstanding balance is \$2,612,079.67 as of November 14, 2022;

WHEREAS, pursuant to 18 U.S.C. § 3613, upon entry of judgment, a lien arose on all of Whitehead's property and rights to property notwithstanding any other federal law, and the United States may use any federal or state procedure to enforce the judgment;

WHEREAS, pursuant to Federal Rule of Civil Procedure 69(a)(1) and N.Y. CPLR § 5222, the United States issued and served restraining notices on CHARLES SCHWAB & CO. and ASSETMARK TRUST COMPANY for substantial nonexempt property belonging or due to Whitehead;

WHEREAS Charles Schwab & Co. answered that it holds approximately \$1,119,500, subject to market fluctuation, in two Personal Choice Retirement Accounts;

WHEREAS AssetMark Trust Company answered that it holds approximately \$64,586, subject to market fluctuation, in two Traditional IRAs belonging to Whitehead and approximately \$111,285 subject to market fluctuation in accounts that Whitehead opened and funded in the names of his adult children, Eric Joseph Whitehead and Ian J. Whitehead;

WHEREAS the United States served the defendant-judgment debtor Eric Ian Whitehead and potentially interested parties Eric J. Whitehead and Ian J. Whitehead with the restraining notices and its motion for turnover orders, including the exclusive and limited exemptions available to criminal judgment debtors under 18 U.S.C. § 3613(a), and no response or objection has been received from anyone;

WHEREAS Whitehead has a substantial nonexempt interest in the funds held by each third-party respondent, to which the criminal judgment lien has attached, and therefore these funds are subject to turnover;

IT IS HEREBY ORDERED that CHARLES SCHWAB & CO. shall liquidate securities as needed to pay to the Clerk of Court within 15 days from the date of this order the nonexempt property it has in its possession, custody, or control belonging to or due the defendant-judgment debtor, ERIC IAN WHITEHEAD, namely 100% of the full liquidated value of his Personal Choice Retirement Account numbers ending in 2677 and 1280, less any deductions required by law, with no withdrawal penalty. *See* 18 U.S.C. § 3613; *United States v. Irving*, 4452 F.3d 110, 126 (2d Cir. 2006) (government authorized to garnish assets held in a retirement account, including an IRA, to satisfy a restitution order); and *United States v. Novak*, 476 F.3d 1041, 1062 (9th Cir. 2006) (involuntary court-ordered distributions from retirement accounts to pay criminal restitution are not subject to additional tax or penalty for early withdrawal);

IT IS FURTHER ORDERED that ASSETMARK TRUST COMPANY shall liquidate securities as needed to pay to the Clerk of Court within 15 days from the date of this order the nonexempt property it has in its possession, custody, or control belonging to or due the defendant-judgment debtor, ERIC IAN WHITEHEAD, namely 100% of the full liquidated value of his Traditional IRAs ending in 3490 and 8858, less any deductions required by law, with no withdrawal penalty.

IT IS FURTHER ORDERED that ASSETMARK TRUST COMPANY shall pay the full liquidated value of the individual account number ending in 3442 nominally titled to Eric Joseph Whitehead and the individual account number ending in 3443 nominally titled to Ian J. Whitehead to the Clerk of Court in partial satisfaction of the federal criminal judgment in this case;

Payments should be made by cashier's check or certified funds to "Clerk of Court" with "No. 20 CR 692" written on the face of each payment and mailed to:

United States District Court
500 Pearl Street, Room 120
New York, New York 10007
Attn: Cashier

A handwritten signature in blue ink, appearing to read 'Ronnie Abrams', is written over a horizontal line.

Hon. Ronnie Abrams
United States District Judge
11/15/2022